CALIFORNIA JUDGES BENCHGUIDES

Benchguide 100

JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING

[REVISED 2004]

ADMINISTRATIVE OFFICE OF THE COURTS

EDUCATION DIVISION/CENTER FOR JUDICIAL EDUCATION AND RESEARCH

Ct 1429.5(i)(1). In deciding whether to issue such an order, the court must consider parole or probation status, whether the conviction was for a violent or serious felony, whether misdemeanor convictions involved domestic violence, weapons, or other violence, and whether there were any prior restraining orders and, if so, whether they were violated. Welf & I C §213.5(k)(2).

If an outstanding warrant is found, or if the search results indicate that the subject of the search is on parole or probation, the judge must order the clerk to notify appropriate law enforcement officials. Welf & I C §213.5(k)(3)(A); Cal Rules of Ct 1429.5(i)(2). Similarly, if the search uncovers the fact that the person who is the subject of the search is on probation or parole, the judge must order the clerk to notify the appropriate parole or probation officer of any information discovered that the judge determines to be applicable. Welf & I C §213.5(k)(3)(B).

C. Conducting the Initial or Detention Hearing

1. [§100.9] Initiating the Hearing

If the social worker determines that the child is to be detained, a petition must be filed with the juvenile court clerk, who must set the matter for hearing on the detention hearing calendar. Welf & I C §§290.1, 311(a); Cal Rules of Ct 1442(b). A detained child must be released within 48 hours (excluding nonjudicial days) if no petition has been filed. Welf & I C §313(a); Cal Rules of Ct 1442(b). The notice of the hearing must be given as soon as possible after the filing of the petition. Welf & I C §290.1(c).

The contents of the petition are prescribed by Welf & I C §332 and Cal Rules of Ct 1407. An unverified petition may be dismissed without prejudice. Welf & I C §333. If DSS seeks to dismiss the petition and the child's counsel does not object to dismissal, a verified petition may also be dismissed; in that case, the parents do not have the right to present evidence before the dismissal. See *In re Eric H.* (1997) 54 CA4th 955, 965–967, 63 CR2d 230. However, once a verified petition has been filed, it may not be dismissed by DSS in opposition to the wishes of the child's counsel without notification to all interested parties so that each may have an opportunity to be heard and to object. *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1074, 8 CR2d 259.

An initial hearing for a nondetained child is also initiated by the filing of a petition in juvenile court. Cal Rules of Ct 1442(a). Once a petition is filed, the clerk must set the hearing within 15 court days. Cal Rules of Ct 1442(a).

Once a petition has been filed and until it is dismissed or dependency is terminated, the juvenile court has sole jurisdiction over issues of custody and visitation. Welf & I C §304; Cal Rules of Ct 1429.1(a).

2. [§100.10] Venue

The initial or detention hearing must be commenced in the juvenile court in the county in which the child resides, the county in which the child is found, or the county in which the acts take place, or circumstances exist, that bring the child under Welf & I C §300. See Welf & I C §327. Under Welf & I C §375 and Cal Rules of Ct 1425, after the court sustains the petition, it can transfer venue of future dependency proceedings to the county in which the child resides with legal guardians, even if the biological parent's residence does not change. *In re Christopher T.* (1998) 60 CA4th 1282, 1288, 1292, 71 CR2d 116.

☛ JUDICIAL TIPS:

- If the child is found within a county, that county's DSS may file a petition even when the acts underlying the allegations in the petition occurred in another county, the child is a legal resident of another county, or the child was not abandoned in the county in which the petition was filed. The case can always be transferred either before or after disposition to the county of legal residence.
- If a petition is filed in a county different from the county of legal residence of the child and in which the witnesses reside, the court may wish to consider initiating contact with the other county's court and DSS to determine whether a petition should be filed there on the agreement of the original court to dismiss the petition before it.
- There are no provisions in federal or state law to permit the transfer of dependency cases between states.

3. [§100.11] Time Limitations

The court must hold the detention hearing for a child who has been removed from the custody of a parent or guardian by a police officer or social worker as soon as possible, but no later than the expiration of the next judicial day after a petition to declare the child a dependent has been filed. Welf & I C §315; Cal Rules of Ct 1442(d). Failure to hold the hearing within these time limits generally requires release of the child from custody. See Welf & I C §315; Cal Rules of Ct 1442(d)–(e). However, because the purpose of the juvenile court law is to protect children, a court should not jeopardize the child's safety as a "punishment" for the DSS's failure to meet time constraints. *Los Angeles County Dep't of Children's Servs. v Superior Court* (1988) 200 CA3d 505, 509, 246 CR 150 (DSS had not filed the petition within the requisite time). An initial hearing for a nondetained child must be held within 15 court days of the filing of the petition. Cal Rules of Ct 1442(a).

although this issue does not often arise in a detention hearing. For example, a statement made by a child victim of abuse or neglect when that child was under 12 years old may be admissible despite the hearsay rule if the statement was made for medical diagnosis or treatment. Evid C §1253. Moreover, a child's hearsay statements may be admissible under a "child dependency hearsay exception" when there are indicia of reliability even if the child is not competent to testify. See *In re Cindy L.* (1997) 17 C4th 15, 18, 69 CR2d 803. Indeed, a child's out-of-court statements may be admissible even if they do not meet the requirements of the child dependency hearsay exception and even if the child has been ruled incompetent to testify. *In re Lucero L.* (2000) 22 C4th 1227, 1242–1243, 96 CR2d 56. See discussion in California Judges Benchguide 101: *Juvenile Dependency Jurisdiction Hearing* §101.43 (Cal CJER).

d. Determination of Parentage

(1) [§100.32] In General

Under Welf & I C §316.2(a) and Cal Rules of Ct 1413(a) and 1441(b), the court must inquire about the identity and address of possible presumed or alleged fathers at the detention hearing. It must engage in this inquiry even if a man claiming to be a father appears at the detention hearing. Welf & I C §316.2. It must engage in a paternity inquiry by asking at least the following questions as it deems appropriate (Welf & I C §316.2(a); Cal Rules of Ct 1413(b)(1)–(6), 1441(b)(1)–(6)):

(1) Has there been a paternity judgment?

(2) Was the mother married, or did she believe herself to be married, at the time of conception?

(3) Was the mother cohabiting with a man at the time of conception?

(4) Did the mother receive support or promises of support during her pregnancy?

(5) Has a man formally or informally acknowledged paternity, including by signing a declaration of paternity?

(6) Have paternity tests been administered and, if so, what were the results?

(7) Does the man qualify as a presumed father under Fam C §7611 or any other Family Code provision? Sometimes the court may be called on to balance competing presumptions. See, *e.g.*, *In re Kiana A.* (2001) 93 CA4th 1109, 1117–1118, 113 CR2d 669 (court chose man who had taken child into home rather than incarcerated husband of mother, although both were presumptive fathers).

The court may also ask if the man has executed a voluntary declaration of paternity and filed it with the state DSS and whether his name is on the birth certificate. See Fam C §§7571–7574. If so, this

declaration acts to establish paternity, has the same effect as a paternity judgment, and establishes the man as a presumed father. *In re Liam L.* (2000) 84 CA4th 739, 746, 101 CR2d 13; Cal Rules of Ct 1413(c). One appellate court has held that once an alleged father provided prima facie proof that he signed a voluntary declaration of paternity at the time of child's birth, he was entitled to rely on the presumption that the document was properly filed, and the burden was on DSS to disprove that fact. *In re Raphael P.* (2002) 97 CA4th 716, 738, 118 CR2d 610.

The court may also be asked to resolve issues of the maternal relationship. A child has standing to bring an action under the Uniform Parentage Act (Fam C §§7600–7730) to determine the existence of a mother-child relationship. *In re Karen C.* (2002) 101 CA4th 932, 935–936, 124 CR2d 677 (presumed, but not biological, mother). A woman who is actually raising a child and whom the child believes is her mother may be that child's presumed mother; the presumption is not necessarily defeated by the fact that the woman has stated to the court, school authorities, and others, that she is not the biological mother. *In re Salvador M.* (2003) 111 CA4th 1353, 1358–1359, 4 CR3d 705.

In the absence of a marital presumption, full paternity findings will not normally be made at an initial hearing. After conducting its inquiry, however, the court must at least note its findings in the court minutes. Welf & I C §316.2(f).

Generally, when conducting the paternity hearing, the court may establish paternity of a child who is the subject of a §300 petition either by blood or genetic tests or on presentation of evidence using procedures established by Cal Rules of Ct 1413. See Cal Rules of Ct 1413(a). These procedures begin with a determination under Cal Rules of Ct 1413(d) of whether a prior finding of paternity was made by:

(1) Asking the person alleging paternity whether there has been such a finding,

(2) Directing the clerk to request the child support enforcement office to inquire whether paternity was established (using Judicial Council form JV-500),

(3) Receiving copies of the completed form from the child support enforcement office, with certified copies of any paternity judgment or order attached, and

(4) Taking judicial notice of the prior paternity determination.

Under Cal Rules of Ct 1413(e), if the child support enforcement office reports or if the court determines through inquiry no prior determination of paternity, the court may undertake such a determination itself by:

(1) Ordering the child, mother, and alleged father to take blood or genetic tests under Fam C §§7550–7557, or

(2) Determining paternity based on testimony, declarations, or statements of the mother and any alleged father, and

(3) Advising any alleged father that if he is declared the father, he will be obligated to support the child and may be the subject of an action to recover support payments and could be convicted of a felony if he is able to provide support and fails to do so (see Pen C §271a).

A court may reasonably deny an alleged father's request for paternity testing, concluding that the child would not benefit from having this person identified as the father, when he has no relationship to the child and has not demonstrated any commitment to the child's welfare, despite learning that he was an alleged father many years earlier. *In re Joshua R.* (2002) 104 CA4th 1020, 1026, 1028, 128 CR2d 241.

☛ JUDICIAL TIP: When the issue of paternity cannot be otherwise resolved, a court should not automatically deny a request for paternity testing at the outset of a case. Such an order could eliminate potential relative placements and deny the child a potential parental relationship.

A presumption of paternity under Fam C §7555 based on the blood test score may be overcome by evidence that the man had no access to the mother at the applicable time. *City & County of San Francisco v Givens* (2000) 85 CA4th 51, 55–56, 101 CR2d 859.

A man who has been named as a father and/or one who wishes to establish paternity must use Judicial Council form JV-505 to exercise a number of options including requesting or waiving an attorney, denying paternity, requesting paternity testing, or requesting a judgment of paternity. If a man requests a finding of paternity on Judicial Council form JV-500 or appears in the dependency case and files an action under Fam C §7630 or §7631, the court must determine if he is the biological father. Welf & I C §316.2(d); Cal Rules of Ct 1413(h). After a dependency petition has been filed, the juvenile court has jurisdiction over actions brought under Fam C §7630 or §7631. Welf & I C §316.2(e).

Once the court determines paternity, it must direct the clerk to prepare and transmit form JV-501 to the child support enforcement office. Cal Rules of Ct 1413(f). The clerk must provide a copy of the petition, a notice of the next scheduled hearing, and Judicial Council form JV 505 to each alleged father unless the petition has been dismissed, dependency has been terminated, the man has denied paternity and waived further notice, or the man has relinquished custody to DSS. Cal Rules of Ct 1413(g). See discussion in §100.12 of *In re Paul H.* (2003) 111 CA4th 753, 755, 761, 5 CR3d 1 for possible court and DSS responsibility in assisting alleged fathers.

(2) [§100.33] When Presumed Father Status Sought

Courts may encounter situations in which a man who is not the biological father seeks custody of the child. Courts have held that a man should not lose his status as a presumed father merely by admitting that he is not the biological father. See *In re Nicholas H.* (2002) 28 C4th 56, 63, 120 CR2d 146. Presumed fatherhood status is not necessarily negated by evidence that the man is not the biological father. *In re Jerry P.* (2002) 95 CA4th 793, 797, 116 CR2d 123. If presumed father status were to be denied to nonbiological fathers, the anomalous result would be that Fam C §7611 and related dependency statutes would permit mothers who are unwilling and incapable parents to have reunification services, while denying such services to a man who is willing and capable. 95 CA4th at 812.

Indeed, in the dependency context, biological fatherhood may be irrelevant to presumed fatherhood. See 95 CA4th at 803–804. There is no policy that would support a requirement of rejecting a man who has acted as the child's *only* father, solely because he has been determined not to be the biological father. *In re Raphael P.* (2002) 97 CA4th 716, 735–736, 118 CR2d 610.

☛ JUDICIAL TIP: The area of paternity in dependency cases, which has *always* had some confusion and uncertainty, is now fraught with further uncertainty as law develops to include some non-biological fathers in the class of presumed fathers. Because this further uncertainty may result in an increase in contested paternity hearings and additional new law, judicial officers should require attorneys to make a good record on paternity issues and to provide relevant points and authorities.

Because a presumed father is entitled to services, visitation, and custody, while an alleged father is not, an attorney for an alleged father should ensure that his or her client is notified so that he may establish paternal status if possible. *In re O.S.* (2002) 102 CA4th 1402, 1408–1410, 126 CR2d 571.

e. [§100.34] Prima Facie Case; Burden of Proof

At the close of the hearing, the court must order the child's release unless a prima facie showing has been made that the child comes within Welf & I C §300 and that certain other conditions exist. Welf & I C §319(b); Cal Rules of Ct 1445(a). The prima facie case for removal must be made by relevant evidence. *In re Raymond G.* (1991) 230 CA3d 964, 972, 281 CR 625 (reasoning by analogy to delinquency cases).

When the petitioning agency does not meet the burden of proof, the court may order whatever action is required on motion of the child, parent,

or guardian or its own motion. Welf & I C §350(c); Cal Rules of Ct 1412(d). The court may take this action after weighing the evidence then before it. Welf & I C §350(c). However, if it denies the motion, the child, parent, or guardian may offer additional evidence without having first reserved that right. Welf & I C §350(c); Cal Rules of Ct 1412(d).

f. [§100.35] When Parent Admits Allegations, Submits, or Enters No-Contest Plea

Whether or not the child is detained, if the parent or guardian wishes to admit the allegations in the petition, plead no contest, or submit the jurisdictional determination based on information provided at the detention hearing and waives a separate jurisdictional hearing, the judge must proceed according to Cal Rules of Ct 1449 and 1451. See Cal Rules of Ct 1444(a).

If the parent admits the allegations, the court must still find that there is a factual basis for the admission. Cal Rules of Ct 1449(f)(6). Normally, this is made based on the court's reading of the social worker's report.

If fewer than all parents or guardians admit the allegations, plead no contest, or submit, or if any parent or guardian who has not been properly notified or for whom service had not been excused on a showing of due diligence is not present, the court must make the necessary findings concerning the taking of the plea or the submission. See Cal Rules of Ct 1449(f). However, the court must take the following issues under submission until the jurisdictional issues concerning all parents can be dealt with: (1) whether the child is described by Welf & I C §300, (2) the factual basis for the allegations, and (3) the truth of the allegations. See Cal Rules of Ct 1449(f)(6)–(8).

☛ JUDICIAL TIPS:

- If all parents wish to submit, but the DSS wishes to present additional evidence, the case must be set for a jurisdictional hearing.
- A submission does not preclude argument on behalf of the parent or guardian, and does not constitute a waiver of appeal of the sustained allegations.

g. [§100.36] Findings

The court must order the child's release unless it finds that there is a prima facie case that the child comes within Welf & I C §300, the court finds that continuing in the home of the parent or guardian would be contrary to the child's welfare, and that any of the following

circumstances exist (Welf & I C §319(b); Cal Rules of Ct 1445(a), 1446(a)):

- There is substantial danger to the child's physical health, or the child is seriously emotionally damaged and removal is the only way to protect the child.
- The child has left placement in which he or she was placed by order of the juvenile court.
- The parent, guardian, or custodian is likely to flee the jurisdiction.
- The child is unwilling to return home, and it is alleged that the child has been physically or sexually abused by a person in the home.

If the child is ordered detained, the court must order that temporary placement and care is vested with the DSS, pending disposition or further court order. Cal Rules of Ct 1446(d). The court must also make a determination that the child's continuing residence in the home of the parent or legal guardian is contrary to the child's welfare. Cal Rules of Ct 1446(a)(2). Moreover, under Welf & I C §319(e) and Cal Rules of Ct 1446(c)(3), when ordering detention the court must:

- Determine if there are any services that would enable the child to return home until the next hearing, and state the facts on which the decision is based;
- Specify why the initial removal was necessary; and
- Order reunification services to be provided as soon as possible, if appropriate.

If the court's findings do not justify detention, the child must be released. See Welf & I C §319(b); Cal Rules of Ct 1445(a). However, unless DSS and the child otherwise agree to a dismissal of the petition, a jurisdiction hearing must still be held. See, *e.g., Allen M. v Superior Court* (1992) 6 CA4th 1069, 1074, 8 CR2d 259 (once a verified petition has been filed, it may not be dismissed by the DSS without notification to all interested parties so that each may have an opportunity to be heard and to object).

The court must also make a finding of whether notice had been given as required by law. Cal Rules of Ct 1412(k).

The court must make findings on the record of whether reasonable efforts were made to prevent or eliminate the need for removal and/or whether the child might be able to be returned home if services were provided. Welf & I C §§306, 319(d)(1); Cal Rules of Ct 1446(c). For discussion of services, see §100.38. If ordering detention, the court must find that there are *no* reasonable services that would prevent need for

detaining child or that would allow the child to return home. Cal Rules of Ct 1446(c)(2).

Whether the child is released or detained, the court must make one of the following reasonable efforts findings concerning efforts to prevent or eliminate the need for removal (see Cal Rules of Ct 1446(c)):

(1) Reasonable efforts have been made, or

(2) Reasonable efforts have not been made.

☛ JUDICIAL TIPS:

- For a county to be eligible for Title IV-E federal foster care funding, the judge must have made specified reasonable efforts findings. See 45 CFR §1356.21(b)(2)(ii). Therefore, it is strongly advised that the court find that "reasonable efforts to prevent removal were made" in a situation in which it might previously have found that the failure to make efforts was reasonable or that reasonable efforts were excused. If the court determines that DSS's concern for the child's safety was a valid basis for not providing services to prevent or eliminate the need for removal, it may find that the level of effort was reasonable, and should thus make a finding that reasonable efforts were made.
- Some judges require DSS workers to file a separate declaration of reasonable efforts at each stage of the proceedings. However, in many counties, the social worker's statement of efforts is included within the normal DSS reports.

If the court orders the child detained, the court must also make the following findings in order to ensure eligibility for Title IV-E funding:

- Continuance in the home of the parent or guardian would be contrary to the child's welfare. Welf & I C §319(b); Cal Rules of Ct 1445(a)(2), 1446(a)(2). See also 42 USC §672(a)(1).
- Temporary placement and care are vested with the child welfare agency pending disposition or further order of the court. Welf & I C §319(e); Cal Rules of Ct 1446(d). See also 42 USC §672(a)(2).

All detention findings must be made on the record and in the written orders of the court. Cal Rules of Ct 1444(b).

h. [§100.37] Orders

As in other juvenile court proceedings, the court may direct its orders to the parent or guardian as necessary for the best interests of the child, and these orders may concern the child's care, supervision, custody, conduct, maintenance, education, medical treatment, and support. Welf & I C §245.5. The court must also order each parent or guardian to complete the Health and Education Questionnaire (JV-225) or to provide the social

worker or court staff with the information necessary to complete the form. Welf & I C §16010; Cal Rules of Ct 1441(c).

When the court orders detention, it must: state the facts on which the decision was based by referring to the social worker's report or other evidence on which it relied to make its determination that having the child remain at home is contrary to his or her welfare; order temporary custody to DSS; explain why the initial removal was justified; and order reunification services to be provided. Welf & I C §319(e). As with findings, all detention orders must also be on the record and a part of the written orders of the court. Cal Rules of Ct 1444(b). For spoken findings and orders, see §100.53.

(1) [§100.38] Services

In making orders, the court must consider whether reasonable efforts were made to prevent or eliminate the need for removal of the child and whether there are available services that would prevent the need for further detention. Welf & I C §319(d)(1); Cal Rules of Ct 1446(c). The court must order the child to be returned to the parent or guardian if that option is made feasible by virtue of these services. Welf & I C §319(d)(2); see Cal Rules of Ct 1446(c)(2). Among the services that the judge may order to return the child home are (Welf & I C §319(d)(1)):

- Case management,
- Counseling,
- Emergency shelter care,
- Emergency in-home caretakers,
- Respite care,
- Homemakers for teaching and demonstrating,
- Parenting classes, and
- Any other services authorized by Welf & I C §§16500 et seq.

☛ JUDICIAL TIP: Because the child's safety is paramount, the court may make whatever orders are reasonably necessary to achieve this goal, including continued detention, in-home classes and services, medical counseling, transportation, or frequent checks by the social worker. When the court makes orders for intensive services, it should ensure that such services are not only reasonably necessary, but also reasonably feasible and practical. See *Elijah R. v Superior Court* (1998) 66 CA4th 965, 969, 78 CR2d 311 (the best possible services are not required; the standard is reasonable services under the circumstances).

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 104

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of reasonable efforts or services). Evidence of any of the following does not necessarily imply a failure to offer or provide reasonable services: (1) the child has been placed with a foster family eligible to adopt or in a preadoptive home, (2) the case plan includes services to make and finalize a permanent plan should reunification efforts fail, or (3) services to make and finalize an alternative permanent plan have actually been provided concurrent with reunification services. Welf & I C §366.21(*l*); Cal Rules of Ct 1461(c)(5). Under Welf & I C §366.21(g), a finding of a substantial probability that the child will be returned to the physical custody of the parent or guardian is a compelling reason not to set a .26 hearing.

- There is no substantial probability of return within 18 months from initial removal. Welf & I C §366.21(g)(1); Cal Rules of Ct 1461(c)(3), 1461(d)(3).

Note: A .26 hearing cannot be set to consider termination of parental rights of only one parent unless that parent is the sole surviving parent or the parental rights of the other parent have been terminated. See Cal Rules of Ct 1459, 1460(i), 1463(a), (g). Moreover, if at this or any subsequent review hearing the court finds by clear and convincing evidence that the child is not likely to be adopted and that there is no one willing to assume guardianship, it must order that the child be placed in long-term foster care and determine whether DSS has made reasonable efforts to maintain the child's relationships with people who are important to the child. See, *e.g.*, Welf & I C §366.21(g)(3); Cal Rules of Ct 1461(d)(2). See also Welf & I C §366.3(d) (periodic hearings).

(2) *Order a .26 hearing to be held within 120 days if there is clear and convincing evidence that reasonable services have been offered or provided.* See Welf & I C §366.21(g)(2); Cal Rules of Ct 1461(d)(3).

(3) *Order an assessment under Welf & I C §366.21(i), containing:*

- Current search efforts for absent parents and legal guardians.
- Review of amount of and nature of contact between the child and the parents and other members of the extended family since the time of placement.
- Evaluation of the child's medical, developmental, scholastic, mental, and emotional status.
- Preliminary assessment of the eligibility and commitment of any prospective adoptive parent or prospective legal guardian to include a criminal check, a check for prior child abuse or neglect, and the ability to meet the child's needs and to understand the obligations of adoption or guardianship.

c. [§104.13] At 12-Month Permanency Hearing

To set a .26 hearing at the 12-month permanency hearing, the court must make the following findings, that:

(1) Continued removal is required because return would create a substantial risk of detriment by a preponderance of the evidence. Welf & I C §366.21(f), (*l*); Cal Rules of Ct 1461(c)(1). It is advisable to state the factual basis for this conclusion on the record.

☛ JUDICIAL TIP: Federal audit mandates require the court to find that the "child's placement is necessary and appropriate." See 42 USC §675(5)(B). Acceptable alternative language might be "out of home placement is necessary and the child's placement is appropriate."

(2) There is no substantial probability of return to the parents within 18 months from detention/removal. Welf & I C §366.21(g)(1); Cal Rules of Ct 1461(c)(3), (d)(3).

(3) Reasonable services were offered or provided. Welf & I C §366.21(f); Cal Rules of Ct 1461(c)(4), (5). This finding must be made by clear and convincing evidence. Welf & I C §366.21(g)(1). But see Welf & I C §366.26(c)(2); Cal Rules of Ct 1463(e)(1) (to terminate parental rights at a .26 hearing, the court need only find that at one hearing at which reasonable efforts were considered, there was a finding of reasonable efforts).

d. [§104.14] At 18-Month Permanency Review Hearing

If the child is not returned home at the 18-month review, services must be terminated and a .26 hearing set unless the court finds, by clear and convincing evidence, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship, in which case, it may order long-term foster care as the permanent plan. Welf & I C §366.22(a); Cal Rules of Ct 1462(b)(3)(A). Therefore, at the 18-month hearing, there are only three alternatives: (1) the child is returned home, (2) services are terminated and a .26 hearing is set, or (3) services are terminated and the court orders long-term foster care after finding by clear and convincing evidence that the child is not a proper subject for adoption. See Welf & I C §366.22(a); Cal Rules of Ct 1462(b)(1), (3). Even when the court learns at the 18-month hearing that the parents have made substantial efforts toward compliance with the reunification plan, it may set a .26 hearing when the parents have not alleviated the conditions that caused the court to remove the child from the home in the first place. See *In re Dustin R.* (1997) 54 CA4th 1131, 1142, 63 CR2d 269.

The one rare exception to this three-part scheme is when the court finds that adequate services have not been offered or provided. In this

situation, the judge must exercise discretion whether to terminate services and select one of the three alternatives specified above or to continue reunification services beyond 18 months. See *In re Dino E.* (1992) 6 CA4th 1768, 1779, 8 CR2d 416 (no reunification plan had been developed). See also *In re Daniel G.* (1994) 25 CA4th 1205, 1209, 31 CR2d 75 (some reunification services had been provided but court still should have exercised discretion in deciding whether or not to extend services when it found previous services to be inadequate) and *In re Elizabeth R.* (1995) 35 CA4th 1774, 1792–1799 , 42 CR2d 200 (parent was hospitalized for mental illness during most of the reunification period, did not miss any visits, and made many attempts to augment visitation; court should have used Welf & I C §352 to continue the 18-month hearing). Distinguishing factors in these cases are either that services were inadequate or that some "external factor" prevented the parent from participating in the services. See *Andrea L. v Superior Court* (1998) 64 CA4th 1377, 1389, 75 CR2d 851. The extension must be supported by substantial evidence that is reasonable in nature, credible, and of solid value. *In re Brequia Y.* (1997) 57 CA4th 1060, 1068–1069, 67 CR2d 389. See discussion in California Judges Benchguide 103: *Juvenile Dependency Review Hearings* §103.46 (Cal CJER).

☛ JUDICIAL TIP: As with the other review hearings, federal audit mandates require the court to make the findings described in §104.12.

2. [§104.15] Ordering an Assessment

Whenever the court terminates or denies reunification services and orders a .26 hearing, it must concurrently order the preparation of an assessment. See, *e.g.,* Welf & I C §366.21(i); Cal Rules of Ct 1460(c). When the .26 hearing is set at disposition, the court must direct DSS (and the licensed county adoption agency, if separate from DSS) to prepare an assessment that includes (Welf & I C §361.5(g)):

- Current search efforts for absent parents.
- Review of amount of and nature of contact between the child and the parents since the time of placement.
- Evaluation of the child's medical, developmental, scholastic, mental, and emotional status.
- Preliminary assessment of the eligibility and commitment of any prospective adoptive parent or prospective guardian to include a criminal check, a check for prior child abuse or neglect, and the ability to meet the child's needs and to understand the obligations of adoption or guardianship.

the evidence shows that the parent's parenting skills are inadequate because of the child's serious behavioral and psychiatric dysfunction, and the inadequacy was caused largely by the parent's schizophrenia and drug abuse. See *In re Krystle D.* (1994) 30 CA4th 1778, 1798–1799, 37 CR2d 132. The Act is applicable to a petition by an Indian child's non-Indian mother to terminate the parental rights of the child's Indian father. *In re Crystal K.* (1990) 226 CA3d 655, 665, 276 CR 619 (decided under former CC §232). Like the "active efforts" finding, the detriment finding required by ICWA will normally be made at the time reunification services are denied or terminated and, if so, need not be made again at the .26 hearing; if not, it should be made at the .26 hearing. *In re Matthew Z.* (2000) 80 CA4th 545, 553–555, 95 CR2d 343.

(2) [§104.60] Evidence

Evidence regarding detriment for termination must be supported by the testimony of a qualified expert witness. 25 USC §1912(f); Cal Rules of Ct 1439(m)(1). Federal guidelines call for the expert to be a member of the Indian child's tribe; a lay expert witness with substantial experience in delivery of services, customs, standards, and practices; or a person with substantial education and experience in the area of specialty. See *In re Krystle D.* (1994) 30 CA4th 1778, 1801–1802 , 37 CR2d 132; 44 Fed Reg 67584–67595 (1979). The fact that a witness does not have demonstrated cross-cultural experience in Indian matters will not preclude the testimony of that witness. 30 CA4th at 1802.

2. [§104.61] Adoption/Adoptive Placement

If the court orders that parental rights be terminated, it must order at the same time that the child be referred to a licensed county adoption agency for placement. See Welf & I C §366.26(b)(1); Cal Rules of Ct 1463(e)(3). The prospective adoptive parents may have their petition heard in juvenile court or in any other court permitted by law. Welf & I C §366.26(e). The clerk must open a confidential adoption file for each child; this file must be separate and apart from the dependency file, with a number different from the dependency case number. Cal Rules of Ct 1464(a)(4). The use of postadoption contact agreements under Fam C §8714.7 is also applicable and available to dependent children if the agreement was entered into voluntarily by all parties. Welf & I C §366.26(a); Cal Rules of Ct 5.400(b).

☛ JUDICIAL TIP: Some judges set a monthly adoptions calendar to review any cases in which parental rights have been terminated and in which adoption has not yet taken place.

If a petition for adoption is filed in the juvenile court, the court must order a hearing on that petition to take place in juvenile court once the natural parents' appellate rights have been exhausted. Welf & I C §366.26(b)(1), (e); Cal Rules of Ct 1463(e)(3). A report required by Fam C §8715 must be read and considered by the court before the adoption; the preparer of the report may be examined by any party to the adoption proceeding. Welf & I C §366.26(e).

On granting an adoption petition and issuing an adoption order for a dependent child, jurisdiction with respect to dependency must be terminated. Welf & I C §366.29(c). If there is a postadoption contact agreement, however, the adoption court must maintain jurisdiction over the child for enforcement of the agreement. Welf & I C §366.29(c).

a. [§104.62] Identifying Adoption as the Plan Without Termination of Parental Rights

The court may also identify adoption as the permanent placement goal without terminating parental rights and order that the agency responsible for seeking adoptive parents make efforts to locate an appropriate adoptive family within 180 days. Welf & I C §366.26(b)(2); Cal Rules of Ct 1463(d)(5). This interim order is appropriate only when the child is difficult to place for adoption because of the child's membership in a sibling group, because of the diagnosis of a medical, physical, or mental disability, or because the child is seven years of age or older. Welf & I C §366.26(c)(3); Cal Rules of Ct 1463(d)(5). The court must not base a finding that the child is not likely to be adopted on the fact that the child is not currently placed in a pre-adoptive home or that there is no relative or foster family willing to adopt. Welf & I C §366.26(c)(1); Cal Rules of Ct 1463(d)(2).

Once an order is made identifying adoptive placement as a goal within 180 days, the court must hold another hearing at the expiration of that period. Welf & I C §366.26(c)(3); Cal Rules of Ct 1463(d)(5). At this hearing, the court must proceed with termination of parental rights and the permanent plan of adoption (if the court can find that the child is likely to be adopted) or with legal guardianship or long-term foster care (if such a finding cannot be made). See Welf & I C §366.26(c)(4)(A); Cal Rules of Ct 1463(d)(5).

b. [§104.63] Placement of Child

If the child has substantial ties to the foster parent or relative caretaker and that person wishes to adopt the child, that person will be given preference over other prospective adoptive parents if the agency placing the child determines that the child has such substantial emotional ties to that person that removal from that caretaker's custody would be

a different preference order (25 USC §1915(c); Cal Rules of Ct 1439(k)(6)).

A tribal policy against adoption of dependent children is not entitled to full faith and credit under ICWA in light of the state's compelling interest in providing stable permanent homes for children who are not able to reunify with their parents, particularly when the tribe has neither intervened nor petitioned the court for transfer to tribal jurisdiction. *In re Laura F.* (2000) 83 CA4th 583, 594–595, 99 CR2d 859. In addition, despite Welf & I C §360.6, ICWA does not apply to remove a multi-ethnic child with some Indian heritage from his prospective adoptive parents when the child's minimal relationship to his biological parents (who themselves have virtually no relationship with their Indian tribes) is not sufficient to overcome the child's right to remain in a home where he is loved and well cared for. *In re Santos Y.* (2001) 92 CA4th 1274, 1315–1316, 112 CR2d 692. In such limited circumstances, the child's constitutional right to a stable home outweighs the statutory provisions of the ICWA. See *In re Santos Y., supra.*

d. [§104.65] Process After Parental Rights Have Been Terminated

If parental rights are terminated, the court must order the child referred to the State DSS or a licensed adoption agency for adoptive placement. Welf & I C §366.26(j). State DSS or the licensed adoption agency will be responsible for custody and supervision of the child until the adoption is granted. Welf & I C §366.26(j). With the agency's consent, the court may appoint a guardian to serve temporarily until the child is adopted. Welf & I C §366.26(j).

☛ JUDICIAL TIP: If adoption does not occur but parental rights have been terminated, the court must set a hearing to select a new permanent plan of either long-term foster care or guardianship.

Because the State DSS or a licensed adoption agency has the exclusive care and control of the child under Welf & I C §366.26(j) from the time adoption is selected as the permanent plan until the child is adopted, a court may not order the child placed in a foster home different from that selected by DSS unless the DSS decision was clearly absurd or not in the child's best interests. *Department of Social Servs. v Superior Court* (1997) 58 CA4th 721, 734, 68 CR2d 239. Generally, the court may not substitute its independent judgment for that of DSS unless DSS has abused its discretion. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (1998) 62 CA4th 1, 10, 72 CR2d 369.

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 100

JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING

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If the court orders the child to be detained out of the home, it must order DSS to provide reunification services, which should begin as soon as possible. Welf & I C §319(e); Cal Rules of Ct 1446(c)(3)(C). This is true even if the court anticipates that there will be a request at the disposition hearing to deny services under Welf & I C §361.5.

The court may also order mental health evaluation and treatment. Welf & I C §319.1. If the court believes that the child needs mental health treatment while detained, it must notify the director of the county mental health department in the county in which the child lives. Welf & I C §319.1. However, if the parent does not consent, the court may not order a psychological evaluation of that parent before the jurisdiction hearing is held, even if there is an allegation or evidence of a parent's mental illness. *Laurie S. v Superior Court* (1994) 26 CA4th 195, 202, 31 CR2d 506.

(2) [§100.39] Visitation

If the child is to be detained, the court must consider whether visitation with other persons, including siblings, would be beneficial or detrimental, and must order visitation if it would benefit the child. See Cal Rules of Ct 1442(g).

Although visitation normally must be ordered with the parent or guardian, it may be limited, modified, or supervised, as the court deems necessary. Visitation may be denied, if necessary, to protect the child. *In re Daniel C. H.* (1990) 220 CA3d 814, 838–839, 269 CR 624. In certain cases, visitation may be curtailed until the parent is rehabilitated. See *In re Cheryl H.* (1984) 153 CA3d 1098, 1133, 200 CR 789. Neither the social worker, the child, nor the child's therapist, if any, can be given the power to determine if visitation will occur. *In re S.H.* (2003) 111 CA4th 310, 317–320, 3 CR3d 465.

It is the court's obligation to determine whether visitation is to occur; however, in an appropriate case, the details of implementation of the court's visitation order may be delegated to the DSS. See *In re Moriah T.* (1994) 23 CA4th 1367, 1374, 28 CR2d 705.

(3) [§100.40] Placement

If the court cannot order the child returned to the custody of a parent or guardian, it must determine if there is an approved relative who is willing and able to care for the child. Welf & I C §319(f). Adult siblings, aunts, uncles, and grandparents must be given preferential consideration. Welf & I C §319(f). See also Welf & I C §281.5 (DSS must recommend placement with relative if it is in child's best interest and is conducive to reunification). If feasible, the child must be placed with detained siblings or half-siblings. See Welf & I C §306.5.

If the court cannot detain the child with a sibling, aunt, uncle, or grandparent, it may order detention with any other approved relative (*i.e.*, related by blood and affinity including "steprelative"), in an emergency shelter or licensed care center or other authorized placement, or in the approved home of a nonrelative extended family member as defined by Welf & I C §362.7; the period of placement must not exceed 15 days. See Welf & I C §319(f); Cal Rules of Ct 1446(e).

☛ JUDICIAL TIP: Many judges use Welf & I C §319(f) to place the child with a nonrelated adult who is known to the child and with whom the child has a close relationship. This may include a family friend, a parent's domestic partner, or some other adult who has been involved in the child's life.

In determining whether detention with a relative is appropriate, the court must consider the recommendations of DSS which should have made an emergency assessment of the relative, including prior reports of abuse and criminal records. See Welf & I C §309; Cal Rules of Ct 1446(e)(1). The court must order the parent to disclose to the social worker the names, residences, and identifying information of any known relative. Welf & I C §319(f); Cal Rules of Ct 1446(e)(2).

The court may always consider detention with the noncustodial parent, even when that parent is out of state. If the court later retains jurisdiction or maintains dependency in order to provide services to or to impose conditions on the noncustodial out-of-state parent, the Interstate Compact on the Placement of Children (ICPC) (Fam C §§7900–7910) must be applied, except when the "placement" is for a short period, such as a school vacation or a period that is less than 30 days. Cal Rules of Ct 1428(b)(1). See Cal Rules of Ct 1428 generally for procedures to apply when placing the child out of state under the ICPC. See also *Tara S. v Superior Court* (1993) 13 CA4th 1834, 1837–1838, 17 CR2d 315, and *In re Johnny S.* (1995) 40 CA4th 969, 977, 47 CR2d 94 (ICPC applies only to interstate placements for foster care or those preliminary to adoption, not to placement with a noncustodial parent out of state whether before or after the jurisdiction and disposition hearing).

☛ JUDICIAL TIP: The *Tara S.* and *Johnny S.* decisions that placements with out-of-state parents is not covered by the ICPC, puts California at odds with the majority of states and the ICPC administrators on this issue. The continuing viability of these cases is unclear, given the promulgation of Cal Rules of Ct 1428.

The court may not order the child removed from the custody of the parents and then physically detain or place the child back in the home under a "detention with parent" order. *In re Andres G.* (1998) 64 CA4th 476, 481, 75 CR2d 285 (placement occurred after disposition hearing).

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locate parents when they have fled with the child or to prosecute parents for contempt of court when they have violated a juvenile court order.

In addition, on request of any party or attorney, or on its own motion, the court must issue subpoenas under CCP §1985 requiring attendance of witnesses and production of documents at the jurisdiction or other hearing. Welf & I C §341; Cal Rules of Ct 1408(d).

F. Time Limitations

1. [§101.24] Setting the Jurisdiction Hearing

The jurisdiction hearing must be set within 30 calendar days from the date the petition is filed if the child is not detained; if the child is detained, the hearing must be set within 15 court days of the court order directing detention. Welf & I C §334; Cal Rules of Ct 1442(f).

If the time requirements are not met, the court is not deprived of jurisdiction. See *Los Angeles County Dep't of Children's Servs. v Superior Court* (1988) 200 CA3d 505, 509, 246 CR 150 (failure to observe time limits for filing of petition does not require that child be released from detention); *In re Charles B.* (1986) 189 CA3d 1204, 1209–1211, 235 CR 1 (juvenile court time requirements are generally not mandatory—review hearing).

A court may also schedule a jurisdiction hearing within ten days of the detention hearing instead of holding a prima facie detention hearing. See Welf & I C §321; Cal Rules of Ct 1447(d). See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearings* §100.45 (Cal CJER).

2. [§101.25] Continuances

The judge may grant a continuance if it would not be contrary to the child's best interests. Welf & I C §352; Cal Rules of Ct 1422(a)(1). In determining whether to grant a continuance, the judge must give substantial weight to the need for prompt resolution of the child's custody status, the need to provide the child with a stable environment, and the damage that could be caused by prolonged temporary placements. Welf & I C §352(a); Cal Rules of Ct 1422(a)(1). A grant of a continuance must be based on good cause (Welf & I C §352(a); Cal Rules of Ct 1422(a)(2)), which does not include convenience of parties or stipulation between counsel (Welf & I C §352(a); Cal Rules of Ct 1422(a)(2)), nor does it include the failure of an alleged father to return a certified mail receipt. See Welf & I C §316.2.

To request a continuance, written notice must be filed at least two court days before the date set for hearing. Welf & I C §352(a); Cal Rules

of Ct 1422(a)(4). The party seeking a continuance must submit affidavits or declarations showing specific facts demonstrating that a continuance is necessary, unless the judge for good cause permits an oral motion. Welf & I C §352(a); Cal Rules of Ct 1422(a)(4). When granting a continuance, the facts that form the basis for the continuance must be entered in the court minutes. Welf & I C §352(a); see Cal Rules of Ct 1422(a)(5).

When the child, parent, or guardian is represented by an attorney and a hearing is continued beyond the time limit within which it would otherwise be required to be held, an absence of objection is considered to be consent. Welf & I C §352(c).

In addition to any continuance authorized by Welf & I C §352, the judge may also continue the jurisdiction hearing for not more than ten days if the judge is satisfied that, within that time, a necessary and unavailable witness will become available (see Welf & I C §354), and may continue the hearing for not more than seven days to appoint counsel, allow counsel to become acquainted with the case, or to determine whether the party can afford counsel (Welf & I C §353). The court must also continue the jurisdiction hearing as necessary to provide reasonable opportunity for the child or other party to prepare for the hearing (Welf & I C §353) or for up to ten days if the social study report was not timely provided to the parties (Welf & I C §355(b)(3)).

Chronic court congestion in the juvenile court is not good cause for continuing the jurisdiction hearing; dependency cases demand priority. See, *e.g.*, *Jeff M. v Superior Court* (1997) 56 CA4th 1238, 1242–1243, 66 CR2d 343. Without good cause for a continuance, a court may not schedule a trial for only a few hours per day, but must instead conduct trial all day every day until the conclusion. 56 CA4th at 1243. See also *Renee S. v Superior Court* (1999) 76 CA4th 187, 193–198, 90 CR2d 134 (continuing jurisdiction hearing to a date almost four months from removal and conducting trial only two days a week was held to be abuse of discretion; trial on continuous basis may be warranted in appropriate circumstances).

☛ JUDICIAL TIP: Every effort should be made to avoid continuances and to emphasize the importance of dependency proceedings and their precedence over other court matters. Welf & I C §345.

G. [§101.26] Pretrial Resolution

Under Welf & I C §350(a)(2), each court should be encouraged to institute a dependency mediation program. California Rules of Ct 1405.5 sets out mandatory standards for practice and administration for dependency mediation services. Cal Rules of Ct 1405.5(a). These

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services for both parents, it may determine at later review hearings which (if either) should ultimately have custody. Welf & I C §361.2(b)(2).

c. [§102.48] Placement With Biological Father

Welfare and Institutions Code §361.2 (placement with noncustodial parent) is not applicable to a biological father who is not the presumed father. *In re Zacharia D.* (1993) 6 C4th 435, 453–454, 24 CR2d 751 (biological father waited until the 18-month hearing to establish paternity and assert his status as a father). Nor is Welf & I C §362.1 applicable to an alleged father. Only a presumed father (Fam C §7611) has a right to custody of his child. 6 C4th at 454. However, a biological father may request and receive custody if it is in the child's best interest. See 6 C4th at 449, 450.

If the child is placed with the biological father, the father may subsequently become a presumed father by virtue of that placement. 6 C4th at 449, 454. See also *Adoption of Kelsey S.* (1992) 1 C4th 816, 842, 4 CR2d 615 (court may grant custody to biological father, who may later be able to qualify as presumed father, even over mother's objection). Indeed, one court has held that *Kelsey S.* status may apply to men who have demonstrated commitment to parental responsibility but who are not biological parents. *In re Jerry P.* (2002) 95 CA4th 793, 816, 116 CR2d 123.

☛ JUDICIAL TIP: Before placing a child with a noncustodial father, the court should determine whether or not he is a presumed father. If he is not, then the court must not place the child with him unless there has been a previous judgment of paternity or the court makes such a judgment at the hearing.

If there is more than one presumed father under Fam C §§7541–7644, the court must weigh the considerations of "policy and logic," and identify only one as the presumed father. See *Brian C. v Ginger K.* (2000) 77 CA4th 1198, 1220, 92 CR2d 294.

d. [§102.49] Reunification Services

Although the court may order services for the noncustodial parent with the goal of strengthening contact with the child with no contemplation of reunification, it may also decline to order services altogether. See *In re Sarah M.* (1991) 233 CA3d 1486, 1501, 285 CR 374, disapproved on other grounds in 13 C4th at 196.

☛ JUDICIAL TIP: When the court orders services for the parent from whom custody was removed, it should clearly state the nature of those services and whether they are designed to help

On the issue of applicability of the ICPC to placement with an out-of-state, noncustodial parent, a joint committee, with representation from the National Council of Juvenile and Family Court Judges, the National Association of Public Child Welfare Administrators, and the ICPC Administrators noted (ICPC Administrators' Memorandum, *Joint Committee's Recommendations to Improve the Placement of ICPC Children,* p 8 (May 8, 1996)):

> Obviously, the standing of a non-custodial parent to have custody of his/her own child would appear on the surface to be absolute. However, there are circumstances in which a judge may want to have a home study for a non-custodial parent. The need for a home study could include situations where the non-custodial parent has never had contact with the child, or has had such infrequent contact as to be considered a stranger to the child. Other situations could include allegations of a history of alcohol and/or drug abuse, domestic violence or criminal history. The subject of the inviolability of a parent to care for his/her child is highly controversial. This committee believes that the court is ultimately responsible for determining if the child should be placed with the non-custodial parent and the necessity for a home study prior to any such placement.

For further discussion of the ICPC, see Seiser & Kumli, California Juvenile Courts: Practice and Procedure §2.128 (Matthew Bender 2004).

J. [§102.51] Placement With Nonparent

When the court removes the child from the legal custodians (one or both parents or guardians), both physical and legal custody reside with the social worker under the court's supervision, unless the court places the child with the noncustodial parent and orders custody awarded to that parent. See Welf & I C §361.2(a)–(b), (e); *In re Robert A.* (1992) 4 CA4th 174, 189, 5 CR2d 438. The court retains jurisdiction to oversee administration by DSS in its choice among placement alternatives enumerated in Welf & I C §361.2. The authority of DSS is limited by the court's interpretation of the child's best interests under Welf & I C §202(b). 4 CA4th at 189.

1. [§102.52] Options

The social worker may place the child in

- The approved home of a relative (Welf & I C §361.2(e)(1); Fam C §7950(a)(1); see also Welf & I C §§281.5 (DSS must recommend placement with relative if it is in child's best interest and is conducive to reunification), 361.3(a) (preferential consideration must be given to a request by relative for placement); *In re Baby Girl D.* (1989) 208 CA3d 1489, 1493, 257 CR 1 (relative more

likely to support reunification efforts while providing psychological and physical care)).

— The social worker must investigate any interested relative. Fam C §7950(a)(1).

— If, after investigation by the social worker and a possible hearing on this issue, the court does not place the child with a relative, it must state reasons on the record why placement with a relative was denied. Welf & I C §361.3(e).

- The approved home of a nonrelative extended family member (see Welf & I C §362.7) (Welf & I C §361.2(e)(3)).
- A foster home that had been a previous placement if in the child's best interests (Welf & I C §361.2(e)(4)).
- A suitable licensed community care facility, except that a child under six years old may not be placed in such a facility except under limited circumstances (Welf & I C §361.2(e)(5), (8)).
- A foster family agency for placement in a foster family home or certified family home (Welf & I C §361.2(e)(6)).
- A home or facility in compliance with the Indian Child Welfare Act (ICWA) (Welf & I C §361.2(e)(7)).

When reunification services have been in place and have been terminated, but parental rights have not yet been terminated, the relative placement preference of Welf & I C §361.3 still applies if the child needs to be moved. Cesar V. v Superior Court (2001) 91 CA4th 1023, 1032, 111 CR2d 243.

There are numerous restrictions on case plans that require out-of-county placement. See Welf & I C §361.2(f). Unless the child is placed with relatives, placement within the parent's or guardian's county of residence is greatly preferred so that reunification efforts may be facilitated; however, such a placement should not be made if it would unnecessarily disrupt the child's life. Welf & I C §361.2(f)–(g).

2. Relative Placement

a. [§102.53] Factors To Consider

In removing the child from the physical custody of the parents and evaluating placement with a relative, the court and the social worker must consider the following factors:

- The best interests of the child. Welf & I C §361.3(a)(1).
- The parent's wishes. Welf & I C §361.3(a)(2).

consideration) that would result in the child residing at a considerable distance from the parents has to be balanced against the parents' reasonable opportunity to pursue reunification. *In re Luke L.* (1996) 44 CA4th 670, 681, 52 CR2d 53.

The court may not refuse placement with relatives based on a past adversarial relationship between the relatives and the parents when the relatives are loving caretakers and there is no evidence that they will impede reunification efforts. See *In re Robert L.* (1993) 21 CA4th 1057, 1068, 24 CR2d 653.

b. [§102.54] Who Qualifies as Relative

Only aunts, uncles, siblings, or grandparents qualify as relatives who must be given preferential consideration for placement under Welf & I C §361.3; cousins do not qualify. Welf & I C §361.3(c)(2); *In re Luke L.* (1996) 44 CA4th 670, 680, 52 CR2d 53. Preferential consideration means that the relative who has requested custody should be the first to be considered and investigated. Welf & I C §361.3(c)(1).

All adults who are related to the child by blood, adoption, or affinity within the fifth degree of kinship, which include stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage has been terminated by dissolution or death, are "relatives" for purposes of relative placement, even if they are not entitled to preferential consideration. Welf & I C §361.3(c)(2).

☛ JUDICIAL TIPS:

- Many judges will consider all individuals who have been verified as relatives if the statutorily defined persons are not available or suitable.
- Until paternity is determined, the court should not detain or place a child with anyone claiming relative status through the child's alleged father. If there is more than one presumed father, the court must weigh policy and logic to recognize only one, whose relatives could then be considered for placement of the child.

c. [§102.55] Procedure/Investigations

A timely request by a parent or other relative made in open court should be sufficient to trigger the investigation and evaluation of relatives required by Welf & I C §361.3. *In re Rodger H.* (1991) 228 CA3d 1174, 1185, 279 CR 643.

Before placing a child with a relative or someone who is not a licensed or certified foster parent, the social worker must visit the home to ensure the appropriateness of the placement and must make certain

criminal checks on the occupants of the home. See Welf & I C §361.4. The court has no discretion to ignore the mandatory language of Welf & I C §361.4(d)(2), prohibiting the child from being placed in a home in which the child would have contact with an adult who has been convicted of a crime. *Los Angeles County Dep't of Children & Fam. Servs. v Superior Court* (2001) 87 CA4th 1161, 1166, 105 CR.2d 254. The only exception occurs when the State DSS has granted a criminal records exemption and has determined that the person being considered for the placement does not present a risk of harm to the child. See Welf & I C §361.4(d)(2)–(6). Although Welf & I C §361.4(d)(2) prohibits initial detention with a person who has a felony conviction, it does not deprive the court of discretion to maintain the placement of dependent children with a foster parent with a felony conviction that occurred after the original placement. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (2003) 112 CA4th 509, 519, 5 CR3d 182.

If, after investigation and a hearing, the court declines to place the child with a relative, it must state its reasons on the record. Welf & I C §361.3(e).

3. [§102.56] Foster Care Placement

The DSS may not delay or deny foster care placement or otherwise discriminate in making a placement decision solely on the basis of race or national origin of the child or foster parent. Fam C §7950(a)(2).This restriction does not apply if the placement is to be for less than 30 days. Fam C §7951. A child who is ten years old or older may make a statement to the court regarding the placement decision although the court is free to disregard the child's preferences. Fam C §7952. See also Welf & I C §361.2(e) and discussion in §102.53 on permissible foster care options.

Placement in a foster home that is located a considerable distance from the parent's residence may not be an insurmountable barrier to the use of reunification services when this is the only foster home available and DSS has provided funds for transportation. See *James B. v Superior Court* (1995) 35 CA4th 1014, 1020, 41 CR2d 762. But see *In re Luke L.* (1996) 44 CA4th 670, 681, 52 CR2d 53 (twice monthly visits over hundreds of miles were held not sufficient to foster reasonable reunification efforts even with DSS paying for bus, meals, and lodging).

K. Guardianship

1. [§102.57] In General

The court may establish a legal guardianship, appoint a guardian, and issue letters of guardianship after receiving evidence on disposition whether or not the child is declared a dependent. Welf & I C §360(a); Cal

(4) Preliminary assessment of eligibility and commitment of prospective guardian and caretaker, including screening for criminal history.

(5) Child's relationship to any prospective guardian and child's perspective, if appropriate.

The preparer of the assessment may be called and examined by any party to the guardianship proceeding, and consideration of the assessment must be reflected in the minutes. Welf & I C §360(a).

3. [§102.59] Procedure

Under Cal Rules of Ct 1456(b)(2), if appointing a legal guardian at the disposition hearing, the court must

(a) State on the record that it has read and considered the assessment (see also Welf & I C §360(a)).

(b) State findings on the record and the factual basis for them.

(c) Advise the parent that there will be no reunification services (see also Welf & I C §360(a)).

(d) Make visitation orders as appropriate, including sibling visitation.

(e) Order that letters of guardianship be issued (see also Welf & I C §360(a)).

L. Reunification Services

1. [§102.60] In General

Reunification with the family is a primary objective when the child has been removed from the family's custody. Welf & I C §202(a); see *In re Zacharia D.* (1993) 6 C4th 435, 447, 24 CR2d 751 (at the disposition hearing stage, reunification is given precedence over child's need for stability). When a child is removed from a parent's or guardian's custody, the court must order reunification services for both the child and the parent or guardian to facilitate reunification of the family within a limited time. Welf & I C §361.5(a); Cal Rules of Ct 1456(f)(1). The statutory scheme contemplates immediate and intensive support services to reunify a family when the dispositional order removes the children from the home. *In re Kristin W.* (1990) 222 CA3d 234, 254, 271 CR 629. It also contemplates the formulation of a plan that is specifically tailored to each family and designed to eliminate those conditions leading to the finding of jurisdiction. *In re Dino E.* (1992) 6 CA4th 1768, 1777, 8 CR2d 416. However, there is no constitutional entitlement to reunification services (*In re Joshua M.* (1998) 66 CA4th 458, 472–477, 78 CR2d 110), nor is there a requirement that a parent accept such services. A parent may waive reunification services, using Judicial Council form JV-195.

A parent who rejects reunification services waives the right to complain of their inadequacy. *In re Joanna Y.* (1992) 8 CA4th 433, 442, 10 CR2d 422. Noncustodial parents who do not want to assume custody need not be given reunification services. *In re Terry H.* (1994) 27 CA4th 1847, 1856, 34 CR2d 271. Courts sometimes give services to such parents, however, in order to enhance their relationships with their children.

Reunification services are only mandated at the original disposition hearing; if the court later holds a hearing on a subsequent petition under Welf & I C §342 alleging additional bases for jurisdiction, the court is not required to order additional services if the previously ordered services are sufficient to address all bases for jurisdiction. *In re Barbara P.* (1994) 30 CA4th 926, 934, 36 CR2d 27. Even if additional services are ordered, the time limitation for reunification is not necessarily extended. See 30 CA4th at 933.

2. [§102.61] Length of Services

For a child who is three years old or older on the date of initial removal, reunification services must not exceed 12 months from the date the child entered foster care. Welf & I C §361.5(a)(1). The period is six months for a child who was under three years old at the time of removal. Welf & I C §361.5(a)(2). When children are members of a sibling group (full or half-siblings) in which one sibling was under three years old at the time of removal, the period may also be set at six months for all the children if the children are to be maintained and placed together in a permanent home should reunification efforts fail. Welf & I C §361.5(a)(3).

Despite these limitations, reunification services may be extended for a period not to exceed 18 months from the date of removal if the parents can show that there is a substantial probability that the goals of the reunification efforts may be reached within that extended time. Welf & I C §361.5(a). If the period is extended, the court must specify the factual basis for its conclusion that there is a substantial probability of reunification with the parents within the extended time period. Welf & I C §361.5(a).

3. [§102.62] Advisements

When the child was under three years old at the time of removal or is a member of a sibling group with one sibling under three years old at that time, the court must inform the parent or guardian that if the parent or guardian does not participate regularly in any court-ordered treatment program or cooperate or use the services, efforts to reunify may be terminated after six months. Welf & I C §361.5(a); Cal Rules of Ct 1456(f)(2). If the child is a member of a sibling group as described above,

the court must inform the parent or guardian of the factors that led to the decision to limit services to six months. Welf & I C §361.5(a).

The presumptive time limits for reunification services begins on the date the child entered foster care. Welf & I C §361.5(a)(1)–(2). This date is defined as the earlier of the date on which the court sustained the petition at the jurisdictional hearing or the date that is 60 days after removal from the custody of the parent or guardian. Welf & I C §361.5(a); Cal Rules of Ct 1401(a)(7)(A). The maximum 18-month reunification period begins, however, on the date the child is removed from the physical custody of the parent or guardian. Welf & I C §361.5(a).

4. [§102.63] Formulating Reunification Plans

Although it is generally stated that the reunification plan should address the issues that caused the child to come within the jurisdiction of the juvenile court, the plan actually should include more. The goal of the plan is to facilitate the reunification of the family within a short period. See Welf & I C §361.5(a). As such, the plan should also address the reasons the child was removed from the custodial parent's home. Welf & I C §361(c).

☛ JUDICIAL TIP: Although case plans are formulated by DSS, rather than by the court, the court should ensure that the plans are tailored to meet the needs of individual families as closely as possible.

Reunification services must be sufficiently comprehensive to permit parents to learn new skills and put them into practice. See *In re Kristin W.* (1990) 222 CA3d 234, 255, 271 CR 629. It is insufficient to order that the parent be offered a parenting class and counseling, and require the parent to show an ability to maintain an appropriate home, if there is only limited provision for visitation and the parent has not been clearly apprised of what was needed in order to regain custody of the children. 222 CA3d at 254–255. Nor is a reunification plan reasonable when compliance with the plan is impossible because the parent is deported before the plan begins. *In re Maria S.* (2000) 82 CA4th 1032, 1039–1040, 98 CR2d 655 (child was born while mother was incarcerated and she was deported on release from prison). See discussion of case-specific plans in §102.64.

When out-of-home services are used and the goal is reunification, the plan must consider the importance of developing and maintaining sibling relationships. Welf & I C §16501.1(f)(9).

a. [§102.64] Case-Limited and Case-Specific Plans

Consistent with the requirement that the plan be tailored to the individual case, reunification plans should be both "case limited" and

"case specific." Case-limited plans limit the services ordered to those actually needed in a particular case to achieve reunification. For instance, all parents would no doubt benefit from both counseling and parenting classes. However, not all parents, even those of dependent children, actually need counseling and parenting classes to have their child placed safely with them. Therefore, many judges believe that the ordering of services must be limited to those services actually needed in the particular case to achieve reunification. By limiting the plan in this way, the court can ensure that both DSS and the parent will be able to fulfill their respective roles within the plan. Without these limitations the plan might be more than the parent could physically complete or DSS could reasonably provide.

Case-specific plans ensure that the specific type of service needed is that which is ordered. For instance, a parenting class for parents with teenage children will not normally meet the needs of parents whose children are infants. Thus a plan that calls for a "parenting class" may be insufficient or be misinterpreted. Instead, the plan should require that the parent "participate in and complete a parenting class designed to address the parenting of infants, including nutrition, medical follow-through, and psychological support, and thereafter demonstrate an ability to care for the infant in a safe and nurturing manner." An example of a failure to order a case-specific plan is requiring the mother to attend a parenting class when the children were declared dependents because of the father's rampage, and the mother protected them as well as she could. See *In re Jasmin C.* (2003) 106 CA4th 177, 181–182, 130 CR2d 558. In this case the court noted that, while the requirement that a parent or guardian attend a parenting class is a fairly common one, it is inappropriate for a parent who did not abuse, neglect, fail to protect, or engage in any other unsuitable behavior. *In re Jasmin C., supra.*

☛ JUDICIAL TIP: When one parent has been abusive towards the other, the court should consider ordering that parent into a certified domestic violence batterers' treatment program as part of a case-specific plan and should postpone couples' counseling until the batterer has participated in such a program.

Another example of the need for case-specific plans is an order that simply requires "counseling" or "therapy." Instead, the order should indicate the type of therapy, the nature of the issues to be addressed, and the goal to be achieved. For example, a case-specific order might read "participate and make progress in individual and group therapy to deal with issues surrounding the molestation of his daughter, to recognize his role in that molestation and the emotional trauma suffered by his daughter, and remain in therapy until he poses no further danger of sexual molestation to his daughter."

It may be helpful in this type of situation to have the perpetrator appear in court and be advised that, without his or her compliance with the plan, the custodial parent may have to choose between the perpetrator and the child.

Many judges feel that a parent who has lost custody of his or her child is entitled to know what is required of a stepparent or partner living in the home in order to achieve reunification. Therefore, when the court orders a case plan for that partner, the parent has measurable criteria to use in deciding whether to stay with that partner in attempting to reunify.

c. [§102.68] Services for Biological Fathers

A biological father who is not a presumed father is not generally entitled to reunification services under Welf & I C §361.5. *In re Zacharia D.* (1993) 6 C4th 435, 451–453, 24 CR2d 751. A presumed father is entitled to services, however, and, if it is in the child's best interests, a biological father *may* receive services. 6 C4th at 451. Alleged fathers, however, are not entitled to custody, reunification services, or visitation. *In re O.S.* (2002) 102 CA4th 1402, 1410, 126 CR2d 571.

In *In re Sarah C.* (1992) 8 CA4th 964, 976, 11 CR2d 414, the court held that a man has no right to reunification services based on his status as the child's biological father when he is not the presumed father, has not been thwarted by the mother in his efforts to become a presumed father, and has not stepped forward at an early stage to take an active role in his child's life). Nevertheless, the court may order services for a man declared by the juvenile court or by a previous court to be the child's biological father when such services are in the child's best interest and the time for the provision of reunification services has not ended. See Welf & I C §361.5(a); *In re Zacharia D.*, *supra*, 6 C4th at 452–456.

An alleged father who has not established that he is the biological father of the child and who does not take the child into his home or remain out of prison long enough to establish a home does not attain presumed father status. Thus he is not entitled to reunification services, even though he maintained contact with the child during part of the incarceration, diligently attended a parenting program, and held the child out as his own. *Glen C. v Superior Court* (2000) 78 CA4th 570, 585–586, 93 CR2d 103.

d. [§102.69] Noncustodial Parents and Grandparents

A noncustodial parent may be entitled to services even if that person does not immediately assume custody. See Welf & I C §361.2(b)(2). However, a court is not required to provide reunification services to a noncustodial parent who has no interest in custody. *Robert L. v Superior Court* (1996) 45 CA4th 619, 628, 53 CR2d 41; *In re Terry H.* (1994) 27

services would benefit the child who would otherwise be denied services under Welf & I C §361.5(b)(6) (severe abuse) or §361.5(b)(7) (services have been denied with respect to a sibling because of Welf & I C §361.5(b)(3), (5), or (6)), the court must consider any relevant information including (Welf & I C §361.5(h); Cal Rules of Ct 1456(f)(10)):

(1) The act or omission comprising the severe sexual abuse or physical harm inflicted on the child or a sibling.

(2) The circumstances under which the harm was inflicted.

(3) The child's emotional trauma.

(4) History of abuse of other children.

(5) Likelihood that the child might safely be returned to the offending person's care within 12 months.

(6) The child's desires for reunification.

The analysis required by Welf & I C §361.5(h) in deciding whether to grant or deny reunification services is only required when the court is assessing whether to deny services under Welf & I C §361.5(b)(6). *In re Rebekah R.* (1994) 27 CA4th 1638, 1651, 33 CR2d 265. When services are denied because of severe sexual or physical abuse, the court must read into the record the basis for the finding of the abuse and the factual findings that are used to determine that reunification services would not benefit the child. Welf & I C §361.5(i).

Once DSS has proved by clear and convincing evidence that the child falls under Welf & I C §300(e) (see Welf & I C §361.5(b)(5)), the general rule favoring granting reunification services no longer applies; at that point, the *parents* have the burden of proof by "substantial evidence" that services are likely to prevent reabuse. *Raymond C. v Superior Court* (1997) 55 CA4th 159, 163–164, 64 CR2d 33.

e. [§102.78] Whereabouts of Parent or Guardian Unknown

The court need not provide reunification services to a parent or guardian if the court finds by clear and convincing evidence that the whereabouts of the parent or guardian are unknown. Welf & I C §361.5(b)(1); Cal Rules of Ct 1456(f)(5)(A). When making a finding under this section, the court must support the finding with an affidavit or proof that the parent or guardian cannot be found after a reasonably diligent search. Welf & I C §361.5(b)(1); Cal Rules of Ct 1456(f)(5)(A). Neither posting of notices nor publication is required to be part of that search. Welf & I C §361.5(b)(1); Cal Rules of Ct 1456(f)(5)(A).

Due diligence statements by DSS can constitute clear and convincing evidence that that parent's whereabouts were unknown. *In re Baby Boy L.* (1994) 24 CA4th 596, 605, 29 CR2d 654. If the whereabouts of a parent

reunification services. Welf & I C §361.5(b)(14). If the court accepts the waiver of services, it must state on the record its finding that the parents or guardians knowingly and intelligently waived the right to services. Welf & I C §361.5(b)(14). A request to withdraw a waiver may be granted only if the parent seemed to be confused at the time of waiver and acted expeditiously thereafter. See *Cynthia C. v Superior Court* (1999) 72 CA4th 1196, 1200–1201, 85 CR2d 669 (in this case, the court had held a hearing in which it found that the parent had not been confused, nor had she been coerced or misled into relinquishing the right to services; in addition, many months had passed before the parent reported a change of heart).

M. [§102.84] Visitation

To maintain the ties between the dependent child and the parents, guardians, and siblings, every order placing a child in foster care and ordering reunification services must provide for visitation between the child and the parent or guardian as long as the child's safety is protected (Welf & I C §362.1(a)(1) (child's address may be kept confidential)) and must provide for sibling visitation unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either sibling. Welf & I C §362.1(a)(2); see discussion in §102.93. Visitation must be as frequent as possible, consistent with the child's welfare. Welf & I C §362.1(a)(1); Cal Rules of Ct 1456(f)(4). Every parent and child, nearly without exception, is entitled to a meaningful judicial evaluation of the question of visitation each time an order is made regarding reunification services. *In re Jonathan M.* (1997) 53 CA4th 1234, 1238, 62 CR2d 208.

When reunification services are not ordered, the permanency plan must include consideration of the existence of siblings and the child's relationship to them, as well as the impact of these considerations on placement and visitation. Welf & I C §362.1(b). See discussion in §§102.93, 102.97.

1. Drafting Visitation Orders

a. [§102.85] In General

In crafting visitation orders, a court must balance its obligation of finality in decision making against the need for flexibility in response to the changing needs of the child and changing family circumstances. To effect this balance, the system envisions a cooperative effort between DSS and the juvenile court, in which the department exercises its limited discretion in the administration of the court's visitation order. See *In re Moriah T.* (1994) 23 CA4th 1367, 1374, 28 CR2d 705, citing *In re Danielle W.* (1989) 207 CA3d 1227, 1234–1235, 255 CR 344. However,

when the court places too much reliance on the discretion of DSS, it is an impermissible delegation of judicial power.

b. [§102.86] Impermissible Delegation

An order providing solely that "visitation with the mother and father be under the direction of the Department of Social Services" is an impermissible delegation. *In re Jennifer G.* (1990) 221 CA3d 752, 755, 270 CR 326. At the very least, the court must determine whether there is a right to visitation, although it may delegate the details of time, place, and manner of visitation to DSS. See *In re Jennifer G., supra,* 221 CA3d at 757. In the same vein, the court may not permit the child's wishes to be the sole factor in whether visitation occurs generally, although children may refuse a particular visit from time to time. See *In re S.H.* (2003) 111 CA4th 310, 317–319, 3 CR3d 465. Moreover, a visitation order that provides for no visitation with the parent "without permission of minors' therapists" is an invalid delegation of judicial authority. *In re Donnovan J.* (1997) 58 CA4th 1474, 1476, 68 CR2d 714.

Similar to *Jennifer G.* is *In re Shawna M.* (1993) 19 CA4th 1686, 1691, 24 CR2d 126, holding that an order that "supervised visitation . . . be arranged through, and approved by, the San Benito County Human Services Agency" is an improper delegation of judicial authority. While specifying the right to visitation, this order gives no guidance to the social service agency in exercising its discretion. 19 CA4th at 1690. In dicta, the court stated that the order might have been valid had it specified that the frequency of visitation be determined by DSS in consultation with the psychiatrist treating the child. *In re Shawna M., supra.*

☛ JUDICIAL TIP: Although case law is still developing as to an acceptable level of delegation, all cases are in agreement in allowing only the court to decide that a parent should be denied visitation on an ongoing basis and in requiring that when the court orders visitation, it should also provide parameters or guidelines necessary under the facts of the case. For example, the court might order a minimum number of hours per week for visitation under supervision with the proviso that the social worker has discretion to increase the hours and end the supervision requirement when it becomes appropriate to do so.

c. [§102.87] Permissible Delegation

Examples of valid orders permitting delegation to DSS of details concerning visitation are:

- Visitation to be facilitated by the child's therapist and to begin when father's therapist determined that father had made

satisfactory progress. *In re Chantal S.* (1996) 13 C4th 196, 213, 51 CR2d 866.

- Monitored visitation with a proviso that DSS has "full discretion to liberalize the visitation" even when the length and time of visitation not specified. *In re Dirk S.* (1993) 14 CA4th 1037, 1045–1046, 17 CR2d 643.
- Visitation required to be at the discretion of the children and DSS, with the children choosing when they want to visit and DSS choosing the location to accommodate the needs of the mother and children. *In re Danielle W.* (1989) 207 CA3d 1227, 1237, 255 CR 344.
- Father required to have regular visitation with the child in such a way that the visitation be "at the discretion of Child Protective Services as to time, place, and manner." *In re Moriah T.* (1994) 23 CA4th 1367, 1374–1375, 28 CR2d 705 (disagreeing with *In re Jennifer G.* (1990) 221 CA3d 752, 755, 270 CR 326, insofar as it suggests that a court must specify the length and frequency of visitation).
- "Reasonable visitation." *In re Christopher H.* (1996) 50 CA4th 1001, 1009, 57 CR2d 861 (order was valid, because it did not delegate to DSS the discretion to determine whether or not visitation occurred and required that the court, not DSS, supervise the details of the visitation).

the child's wishes cannot be the *sole* factor in determining whether or not visitation should take place (see §102.86), in a situation in which the child's wishes are an issue, a good practice would be to provide an order for regular visits, with social workers or therapists being ordered to respond to the dynamics of the parent/child relationship in such a way as to cause increases or decreases in visits as the dynamics evolve. *In re Julie M.* (1999) 69 CA4th 41, 51, 81 CR2d 354.

2. Incarcerated Parents

a. [§102.88] In General

Visitation with an incarcerated parent is one of the kinds of reunification services that the court may order under Welf & I C §361.5(e). A parent who is incarcerated for reasons not involving abuse of the child should ordinarily be offered visitation. See, *e.g.*, *In re Brittany S.* (1993) 17 CA4th 1399, 1407, 22 CR2d 50. Denial of visitation with an incarcerated parent may not be based solely on the child's age (*In re Dylan T.* (1998) 65 CA4th 765, 773–775, 76 CR2d 684) or on geography (*In re Jonathan M.* (1997) 53 CA4th 1234, 1237, 62 CR2d 208—DSS attempted to place a 50-mile limitation on prison visitation).

When a de facto parent's request for visitation is denied, that person has no standing to challenge the court's failure to order these services because a de facto parent does not have a *right* to visitation or other reunification services. *Clifford S. v Superior Court* (1995) 38 CA4th 747, 752, 45 CR2d 333.

6. [§102.93] Siblings

Visitation with siblings must be ordered unless the court finds by clear and convincing evidence that this interaction would be detrimental to either child. Welf & I C §§362.1(a)(2), 16002(b). Siblings include any child related to the dependent child by blood, adoption, or affinity through a common biological or legal parent. Welf & I C §362.1(c).

Under Welf & I C §16501.1(f)(6), a case plan for a child for whom out-of-home services are ordered must include a recommendation regarding development and maintenance of sibling relationships. Indeed, DSS must make every effort to keep siblings together or at least to develop a case plan to provide for ongoing and frequent interaction among siblings. Welf & I C §16002(b). If the court orders suspension of visitation with siblings, it must note in the order the reason for the determination that sibling interaction would be harmful. See Welf & I C §362.1(b).

The issue of sibling visitation may be raised at any time by means of a petition for modification. See Welf & I C §388(b).

☛ JUDICIAL TIP: It would appear that siblings certainly have the right to raise sibling visitation matters. The answer to the question of who else has standing to raise such issues is not yet clear. Nevertheless, the court has the ability to consider sibling visitation matters on its own motion and thus may wish to be open to having the issue identified by any of the parties or participants

N. Other Findings and Orders

1. [§102.94] Reasonable Efforts To Prevent Need for Removal of Child From Home

At the conclusion of the disposition hearing, if the child is removed from the home, the court must make findings as to whether reasonable efforts were made to prevent or eliminate the need for removing the child. Welf & I C §361(d); see also Cal Rules of Ct 1401(a)(23) for definition. When removal is based on Welf & I C §361(c)(5) (child has been left without provision for support), the court must make a finding of whether it was reasonable *not* to make any such efforts. Welf & I C §361(d). When a court places the child with a noncustodial parent and does not order reunification services with the former custodial parent under Welf & I C

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1462(b)(4). The court may adjust both the level and the frequency of visitation, if warranted by the circumstances.

☛ JUDICIAL TIP: Frequently, parents request an increase in visitation pending the .26 hearing in order to better prepare to prove the beneficial relationship exception of Welf & I C §366.26(c)(1)(A), while DSS often requests a decrease in visitation so as to better prepare the child for the alternative permanent plan which may be selected at the .26 hearing. Many judges feel that it is a better practice to deny both requests and simply to continue existing visitation orders pending the .26 hearing, unless there has been a significant change of circumstances. In these circumstances, it is advisable for the court to make it clear that the continued visitation is not for the purposes of reunification.

(4) *When a .26 hearing is ordered and the parent or guardian is present:*

- *Order the parent or guardian to return for the .26 hearing.*
- *Advise the parent or guardian of the writ remedy for review of the orders, and make sure the parent or guardian receives the Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B (JV-820) and Petition for Extraordinary Writ (JV-825).* See Cal Rules of Ct 39.1B, 1462(b)(7)–(10).
- *Direct DSS to prepare an assessment under Welf & I C §366.21(i), and order the termination of reunification services to the parent or guardian.*

(5) *If the parent is absent, consider making an inquiry as to whether DSS has used due diligence in attempting to locate the parent.* If a finding of due diligence is made, DSS need only submit an order for publication or other substituted service. See Cal Rules of Ct 1463(b)(2).

4. [§103.7] Checklist: Postpermanency Planning Review Hearing

The purpose of the postpermanency planning review hearing is to ensure that all permanency planning options are considered (Welf & I C §366.3(g)) and that adoption or legal guardianship is completed as expeditiously as possible (Welf & I C §366.3(a)). See discussion in §103.48.

(1) *If the child has been adopted since the last review hearing, terminate juvenile court jurisdiction over the child.* Welf & I C §366.3(a); Cal Rules of Ct 1466(a). Following a termination of parental rights, the former parent is not a party to, and is not entitled to receive notice of, any

subsequent proceedings regarding the child. Welf & I C §366.3(a). This is true even if the former parent has appealed the termination order. Once an order terminating parental rights has been made, the juvenile court has no power to set aside, change, or modify the order. Welf & I C §366.26(i); Fam C §7894; see *David B. v Superior Court* (1994) 21 CA4th 1010, 1018, 1020, 26 CR2d 586 (parents have no right to challenge juvenile court jurisdiction for lack of notice when order terminating parental rights is final before challenge is made).

(2) *If a legal guardianship of the child has been established but dependency had been continued, consider whether to*

- *Continue dependency jurisdiction over the child*, or
- *Terminate dependency jurisdiction.* The court continues to maintain jurisdiction only over the guardianship. Welf & I C §§366.3(a), 366.4; Cal Rules of Ct 1466(a), (c).

☛ JUDICIAL TIP: It is not often that dependency jurisdiction should be continued when a guardianship has been established. Because the court may retain jurisdiction over the child as a ward of the guardianship, the court has continuing authority to address any problems that may arise during the course of the guardianship without the necessity of maintaining dependency jurisdiction. However, dependency may be continued in an appropriate case to permit the guardian to have access to services such as counseling that are necessary to a successful guardianship.

If the guardians live out-of-state and the child is subject to the Interstate Compact on Placement of Children (ICPC) (Fam C §§7900–7910), it may be difficult to obtain permission to terminate jurisdiction.

(3) If a guardian is appointed and dependency is continued, continue to include the parent in the notice of review hearings.

(4) *If the child is in long-term foster care:*

- *Determine whether the parents of the child received notice of the hearing.* See Welf & I C §366.3(e). Notice of the hearing must be given to parents as specified in Cal Rules of Ct 1460(b) and to the guardian if one has been appointed. Cal Rules of Ct 1466(a).
- *Read and consider the report submitted by DSS.* Welf & I C §366.3(e); Cal Rules of Ct 1466(a)–(b).
- *Consider the following factors under Welf & I C §366.3(e):*
  - — The progress being made to provide a permanent home for the child;
  - — The continuing necessity for and appropriateness of the child's placement;

- Identification of people, other than siblings, who are important to a child who is 10 years old or older and who is not placed with a relative, and actions necessary to maintain the child's relationships with those people
- The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships with those people who are important to the child and efforts to identify a prospective adoptive parent;
- The extent of DSS compliance with the case plan in making reasonable efforts to return the child to a safe home and in completing plans for permanent placement;
- The adequacy of services provided to the child, including such documents as the birth certificate, relevant information including family and placement history, and services for a child who has reached the age of majority (see Welf & I C §391; Cal Rules of Ct 1466(d));
- The parents' progress toward alleviating the causes that required foster care;
- The probable date by which the child may be returned home or placed for adoption or in some other permanent living situation;
- Whether the child has siblings under the court's jurisdiction, and if so:
  - The nature of the relationship with the siblings,
  - The appropriateness of developing and maintaining sibling relationships,
  - If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it,
  - The frequency and nature of sibling visitation, and
  - The impact of sibling relationship on placement and permanent planning;
- The services, if any, needed to assist a child who is 16 years of age or older to make the transition from foster care to independent living (see Welf & I C §366.21(f)).

- *Order continued long-term care for the child.*
- *Order the matter set for a new .26 hearing if it has been 12 months since the permanent plan of long-term foster care was ordered and there is no compelling reason shown not to set a .26 hearing.* Welf & I C §366.3(g).

custody of the parent or guardian by the 18-month permanency review hearing, reunification services will be terminated and a permanent plan will be developed at that hearing. Welf & I C §366.21(g)(1), (h).

e. [§103.42] Setting a .26 Hearing

If the court does not find a substantial probability that the child will be returned home within 18 months from removal, the court may order that a .26 hearing be held, but only if the court does not continue the case to a permanency review hearing. Welf & I C §366.21(g)(2); Cal Rules of Ct 1461(d)(3). When the court sets a .26 hearing, it must order the termination of reunification services to the parent or guardian and direct DSS to prepare an assessment under Welf & I C §366.21(i). Welf & I C §366.21(h)–(i); Cal Rules of Ct 1461(d)(4)–(5). When ordering a .26 hearing, the court must order visitation to continue unless this course of action would be detrimental to the child and must make appropriate orders enabling the child to maintain relationships with people who are important to him or her. Welf & I C §366.21(h), Cal Rules of Ct 1461(d)(4). The court must also advise the parent of the right to challenge this decision by means of extraordinary writ. See Welf & I C §366.26(*l*)(3)(A); Cal Rules of Ct 1461(d)(10). The court must ensure that the clerk sends notice of the requirement for writ review to all absent parties. See Welf & I C §366.26(*l*)(3)(A); *In re Cathina W.* (1998) 68 CA4th 716, 721–724, 80 CR2d 480. See discussion in §103.52.

☛ JUDICIAL TIP: It is important that parents are advised of the writ review requirement, either in court when setting the .26 hearing or by mail to absent parents, so that parents are fully apprised of their rights and cannot raise the lack of notice on appeal.

A finding of substantial probability that the child will be returned home by the next review hearing is a compelling reason for the determination that setting a .26 hearing is not in the child's best interests. Welf & I C §366.21(g)(1).

3. [§103.43] 18-Month Permanency Review Hearings

An 18-month permanency review hearing (no later than 18 months from the date the child was originally removed from the physical custody of the parent) must be held when the case was continued at the 12-month permanency hearing on grounds that at that time there had been a substantial probability that the child would be returned to the physical custody of the parent or guardian within six months (actually, within 18 months from removal) or that reasonable reunification services had not been provided. Welf & I C §§366.22(a), 366.21(g)(1). The 18-month permanency review hearing represents a critical juncture in that the court